IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2006

CORAM:
THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P. No.3572 of 1997 and W.P.M.P. No.5985 of 1997

1. Desingh, Secretary
   Sankarapuram Primary Cooperative
   Land Development Bank
   Sankarapuram
2. S.A. Kannan, Supervisor
   Sankarapuram Primary Cooperative
   Land Development Bank
   Sankarapuram
3. R. Annamalai, Accountant
   Sankarapuram Primary Cooperative
   Land Development Bank
   Sankarapuram
4. N. Thangaraj, Supervisor
   Sankarapuram Primary Cooperative
   Land Development Bank
   Sankarapuram
5. E. Ramalingam, Supervisor
   Sankarapuram Primary Cooperative
   Land Development Bank
   Sankarapuram
6. A. Usharani, Typist
   Sankarapuram Primary Cooperative
   Land Development Bank
   Sankarapuram — Petitioners

vs.

1. The Joint Registrar
   Villupuram Ramasamy Padayachiar Region, Villupuram
2. The Deputy Registrar
   Villupuram – 605 602
   Thirukoilur, V.R.P. District
3. The President
   Sankarapuram Primary Cooperative
   Land Development Bank
   Sankarapuram – 606 401 — Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus as stated therein.

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For petitioners Mr. S. Vadivel
For RR 1 & 2 Mr. I. Paranthaman, Govt. Advocate
For R3 Mr. S. Ramachandran

O R D E R

The writ petition has been filed by the petitioners seeking a writ of certiorari, filed Mandamus calling for records of the first respondent in R.C. No.1602 of 1993 Niva. No.1 dated 13.01.1997, quash the same and to direct the respondents to forbear from taking any action against the petitioners pursuant to the said impugned proceedings dated 13.01.1997.

2. The case of the petitioners, in nutshell is as under:

i. The petitioners are the employees of Sankarapuram Primary Cooperative Land Development Bank (in short "the Bank"). On 19.09.1996, a Settlement bearing no.1426 of 1996 dated 19.09.1996 under Section 12 (3) of the Industrial Disputes Act (in short "the I.D. Act") and in accordance with Rule 25 of the Tamil Nadu Industrial Dispute Rules, was entered into between the Bank represented by the then Special Officer and the petitioners. The Bank gave effect to the Settlement and fixed the salary and other allowances of the petitioners in accordance with the 12(3) Settlement. The Settlement contained provisions for classification of Society into 'A', 'B', 'C' and 'D' according to loan outstanding as on 31.03.1992 and collection of overdue loan. The condition which was attached to all the classification is that there must have been 50% collection of overdues. The Settlement, which was operative for a period of five years from 01.07.1992 to 30.06.1997, also provided for the fixation of pay scale and allowances to the employees of the Society who are the petitioners. The pay and allowances fixed pursuant to the Settlement had been duly checked and authorised by the Sub-Registrar on behalf of Deputy Registrar, Tirukoilur, on 18.10.1996.

ii. While so, by the impugned proceedings dated 13.01.1997, the first respondent informed the third respondent that there had been wrong classification and wrong calculation of pay and that an amount of Rs.2,27,304.95 had been paid to the employees in contravention of the Circular issued by the Registrar of Cooperative Societies and directed recovery of the amount already paid to the petitioners. Based on the impugned proceedings of the first respondent, the third respondent had stopped the disbursement of pay of the petitioners from January 1997. The petitioners have filed the present writ petition on the ground that the action of the first respondent is ultra vires his powers under the Tamil Nadu Cooperative Societies Act.

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3. The first respondent has filed his counter affidavit and contended that:

a. he had issued the impugned proceedings only in the form of a letter drawing the attention of the third respondent to the wrong basis on which the emoluments were fixed under the Settlement and by that, he had not directed to modify the principle on which the settlement was arrived at.

b. the Government have issued necessary orders after examining the streamline committee recommendations in G.O. Ms. No.(2D) No.68 Cooperation, Food and Consumer Protection Department dated 12.11.1993 and in total violation to the same, the then Management of the Bank i.e. the Cooperative Sub-Registrar/Special Officer have irregularly fixed the pay structure over and above the scales prescribed in the 12(3) Settlement.

c. The then Management of the Bank submitted the pay fixation statement for checking and approval to the second respondent and the Cooperative Sub-Registrar (L) who had checked the pay scales later had found that the pay scales were based on wrong classification and calculation and consequently, he cancelled the pay fixation statement and communicated the same on 22.10.1996 and despite the instructions of the Administrative Officer, the Management of the Bank had given effect to the Settlement with effect from 01.07.1992 and

d. he had instructed one Cooperative Sub-Registrar/Managing Director of Kallakurichi Cooperative Land Development Bank to verify and submit the correct pay fixation statement and on the basis of the report submitted by him, the second respondent communicated the correct pay fixation statement to the third respondent and the same has not been given effect to since the petitioners had obtained stay of the same.

4. In response to the counter affidavit, the petitioners have filed Rejoinder Affidavit contending that the pay and allowances had been fixed only after proper check by the Deputy Registrar and the same had not been fixed based on any mis-representation for such payment by the petitioners.

5. Mr. S. Vadivel, learned counsel for the petitioners has contended that the 12(3) Settlement is operative for five years and as such, the same cannot be nullified by any proceedings before the expiry of the said period. It is his strenuous contention that the 12(3) Settlement is outside the provisions of the Cooperative Societies Act and as such, the first and second respondents have no jurisdiction to interfere with the same. He has pointed out a Division Bench judgment of this Court reported in 1992 (1) LLJ 747 in the case of Tiruchirapalli Hirudayapuram Coop. Bank Employees Union, etc. vs. Jt. Registrar of Coop. Societies, Tiruchirapalli, etc. wherein it was held that the Joint Registrar of Cooperative Society has no jurisdiction whatsoever to issue any circular so as

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to nullify a 12(3) Settlement and the relevant paragraphs read as under: (Paras 1 & 2)

> ". . .We are only called upon to go into the legal propriety of the proceedings impugned in these cases whereby the settlements are sought to be nullified. Whatever be the nature of the factors alleged as vitiating the settlements, can the respondents by the proceedings impugned, given an adjudication over the settlements and unilaterally nullify them, is the question that alone comes up for consideration by us. Suffice it to point out that what the respondents have done is not only unorthodox, but also not fitting in with any precept of law. The respondents cannot by issuing the proceedings impugned, adjudicate over the settlements and unilaterally set at naught the settlements apparently fitting in with the provisions of the Act. There is a total lack of jurisdiction and competency in law in this regard. This factor alone, in our view, should weigh with us for purposes of deciding these cases. There is no need for us to travel beyond this.
>
> . . .Such a settlement is not at all falling within the ambit of Section 153 of Act 30 of 1983. Learned Advocate General would submit that there could be examination of the resolutions or the decisions of the Cooperative Societies authorising the entering into such settlements pursuant to the exercise of power under Section 153 of Act 30 of 1983 and the Court must view the impugned proceedings as tending to achieve this end only. We are unable to accept this line of thinking.. . ."

6. His earnest submission is that since the benefit of pay and allowance had already been given effect to under the Settlement as per the Industrial Disputes Act, the petitioners would be put to irreparable loss and hardship if the amount paid to them is recovered based on the impugned proceedings issued by the first respondent.

7. Per contra, Mr. I. Paranthaman, learned Government Advocate has contended that if the mala fide pay fixation is given effect to, the financial condition of the Primary Cooperative Land Development Bank will get depleted and hence, the pay and allowances of the petitioners may be fixed in accordance with the Government Orders and the instructions of the Registrar of Cooperative Societies to safeguard the funds of the Bank.

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8. I have given careful consideration to the rival submissions of the counsel on either side.

9. In the instant case, admittedly, the pay and allowances fixed pursuant to the Settlement had been checked and authorised by the Sub-Registrar on behalf of Deputy Registrar, Tirukoilur, on 18.10.1996. In my view, even if the pay and allowances fixed under the Settlement were improper, it ought to have been found out by the Sub-Registrar who checked the same for and on behalf of the Deputy Registrar, Tirukoilur. When that is not the case and when the pay and allowances have already been given effect to, as rightly pointed out by the counsel for the petitioners, the first respondent has no jurisdiction whatsoever to pass the impugned order to nullify the 12(3) Settlement. The judgement of the First Bench of this Court reported in 1992 (1) LLJ 747 (supra) adds strength and force to the argument of the counsel for the petitioners on the aspect of lack of jurisdiction on the part of the first respondent to pass the impugned order. Though it has been contended on the side of the respondents that the pay fixation has been done on the basis of mis-representation made by the petitioners, no case has been made out to that effect.

In the light of what is stated above, the impugned proceedings dated 13.01.1997 insofar as the portion nullifying the settlement arrived at under Section 12(3) of the I.D. Act shall not be in force to the prejudice of the petitioners, particularly in view of the fact that the Industrial Disputes Act is a beneficial legislation as far as the employees are concerned. Accordingly, the impugned proceedings issued by the first respondent to the effect of nullifying the 12(3) Settlement is quashed and the writ petition stands allowed. Consequently, connected W.P.M.P. No.5985 of 1997 is closed. No costs.

cad

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Joint Registrar
   Villupuram Ramasamy Padayachiar Region

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   Villupuram - 605 602
   Thirukoilur, V.R.P. District

3. The President
   Sankarapuram Primary Cooperative
   Land Development Bank
   Sankarapuram - 606 401

+ 2ccs to Mr. S. Vadivelu, Advocate sr no. 56214

MRD(CO)
NM(29.11.2006)

W.P. No.3572 of 1997

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